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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,901	08/17/2005	Bernhard Mattes	10191/3722	7561
26646 7590 05/08/2008 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER PERUNGAVOOR, SATHYANARAYA V				
ART UNIT		PAPER NUMBER		
2624				
MAIL DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/523,901

Applicant(s)

MATTES ET AL.

Examiner

SATH V. PERUNGAVOOR

Art Unit

2624

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 12-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Applicant(s) Response to Official Action

- [1] The response filed on January 9, 2008 has been entered and made of record.

Response to Arguments/Amendments

- [2] Presented arguments have been fully considered, but are rendered moot in view of the new ground(s) of rejection necessitated by amendment(s) initiated by the applicant(s).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

- [3] Claim 12 is rejected under 35 U.S.C. 102(b) as being anticipated by Kojima [US 5,000,188].

Regarding claim 12, Kojima meets the claim limitations, as follows:

An apparatus for obtaining physiological data of at least one person [fig. 1], comprising: at least one sensor (*i.e.* 10) for detecting the physiological data, including a measured pulse rate of the at least one person [fig. 1; col. 2, ll. 62-68]; and a control unit (*i.e.* 14) for determining, on the basis of the physiological data, the age of the at least one person [fig. 1; col. 3, ll. 35-49].

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

[4] Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zander et al. (“Zander”) [DE 19856129] in view of Kojima [US 5,000,188].

Regarding claim 12, Zander discloses the following claim limitations:

An apparatus for obtaining physiological data of at least one person [abstract], comprising: at least one sensor (*i.e.* 1) for detecting the physiological data (*i.e.* anthropometric) [abstract]; and a control unit (*i.e.* 3) for determining, on the basis of the physiological data (*i.e.* anthropometric), the age of the at least one person [abstract].

Zander does not explicitly disclose the following claim limitations:

Including a measured pulse rate of the at least one person.

However, in the same field of endeavor Kojima discloses the deficient claim limitations, as follows:

Including a measured pulse rate of the at least one person [fig. 1; col. 2, ll. 62-68].

It would have been obvious to one with ordinary skill in the art at the time of invention to modify the teachings of Zander with Kojima to include pulse rate based age determination in addition to image based age determination, the reasoning being that additional independent age determinations provide a confidence measure to the determined age.

Regarding claim 13, Kojima meets the claim limitations, as follows:

The apparatus as recited in claim 12, wherein the at least one sensor includes an image transducer (*i.e.* 1) [*abstract*].

[5] Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zander et al. (“Zander”) [DE 19856129] in view of Kojima [US 5,000,188] further in view of Amir [US 6,393,136].

Regarding claim 14, Zander and Kojima meet the claim limitations as set forth in claim 13. Zander and Kojima do not explicitly disclose the following claim limitations:

The apparatus as recited in claim 13, wherein the image transducer is a stereo video sensor, the physiological data includes a pupil size of the at least one person and the video sensor is assigned an evaluation module configured to measure the pupil size of the at least one person.

However, in the same field of endeavor Amir discloses the deficient claim limitations, as follows:

The apparatus as recited in claim 13, wherein the image transducer is a stereo video sensor (*i.e.* 104 and 105), the physiological data includes a pupil size of the at least one person and the video sensor is assigned an evaluation module (*i.e.* 110) configured to measure the pupil size of the at least one person [*fig. 1; col. 7, ll. 5-12*].

It would have been obvious to one with ordinary skill in the art at the time of invention to modify the teachings of Zander and Kojima with Amir to include a stereo camera, the reasoning being the ability to determine three dimensional shapes.

Regarding claim 15, Amir meets the claim limitations, as follows:

The apparatus as recited in claim 14, wherein the video sensor is configured for triangulation measurement [*fig. 1; col. 9, ll. 22-25*].

[6] Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zander et al. (“Zander”) [DE 19856129] in view of Kojima [US 5,000,188] further in view of White et al. (“White”) [US 5,071,160].

Regarding claim 16, Zander and Kojima meet the claim limitations as set forth in claim 13.

Zander and Kojima do not explicitly disclose the following claim limitations:

The apparatus as recited in claim 13, further comprising: an ultrasound spacing sensor for measuring the spacing of the at least one person from an air bag cover.

However, in the same field of endeavor White discloses the deficient claim limitations, as follows:

The apparatus as recited in claim 13, further comprising: an ultrasound spacing sensor for measuring the spacing of the at least one person from an air bag cover [*col. 4, ll. 30-34 and 42-47*].

It would have been obvious to one with ordinary skill in the art at the time of invention to modify the teachings of Zander and Kojima with White and utilize an ultrasound sensor to measure the spacing, the reasoning being to selectively enable the airbag [*col. 4, ll. 52-54*]

[7] Claims 17, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zander et al. ("Zander") [DE 19856129] in view of Kojima [US 5,000,188] further in view of Amir [US 6,393,136] further in view of Kim et al. ("Kim") [US 2002/0024633 A1].

Regarding claim 17, Zander, Kojima and Amir meet the claim limitations as set forth in claim 14.

Zander, Kojima and Amir do not explicitly disclose the following claim limitations:

The apparatus as recited in claim 14, wherein the control unit correlates the measurement of the pupil size with at least one further measured value for determining the age.

However, in the same field of endeavor Kim discloses the deficient claim limitations, as follows:

The apparatus as recited in claim 14, wherein the control unit correlates the measurement of the pupil size with at least one further measured value for determining the age [*para. 0080*].

It would have been obvious to one with ordinary skill in the art at the time of invention to modify the teachings of Zander, Kojima and Amir with Kim to include pupil size based age determination in addition to image and pulse based age determination, the reasoning being that additional independent age determinations provide a confidence measure to the determined age.

Regarding claim 19, Kojima meets the claim limitations, as follows:

The apparatus as recited in claim 17, wherein the at least one sensor includes a pressure pick-up for measuring the pulse rate of the at least one person, the control unit using the pulse rate of the at least one person as the at least one further measured value [fig. 1; col. 2, ll. 62-68].

Regarding claim 21, Kojima meets the claim limitations, as follows:

The apparatus as recited in claim 17, wherein the at least one further measured value includes an electrical parameter (*i.e. pulse wave*) of the at least one person, the electrical parameter being indicative of a body composition (*i.e. heart pulse*) of the at least one person [col. 2, ll. 62-68].

[8] Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zander et al. (“Zander”) [DE 19856129] in view of Kojima [US 5,000,188] further in view of Amir [US 6,393,136] further in view of Kim et al. (“Kim”) [US 2002/0024633 A1] further in view of Beardsley [US 6,154,559].

Regarding claim 18, Zander, Kojima, Amir and Kim meet the claim limitations as set forth in claim 17.

Zander, Kojima, Amir and Kim do not explicitly disclose the following claim limitations:

The apparatus as recited in claim 17, wherein the control unit uses hair color, smoothness of face, and skin texture of the at least one person as the at least one further measured value.

However, in the same field of endeavor Beardsley discloses the deficient claim limitations, as follows:

The apparatus as recited in claim 17, wherein the control unit uses hair color, smoothness of face, and skin texture of the at least one person as the at least one further measured value [col. 2, ll. 30-40].

It would have been obvious to one with ordinary skill in the art at the time of invention to modify the teachings of Zander, Kojima, Amir and Kim with Beardsley to include facial features, the reasoning being that additional features provide a confidence measure to the determined age.

[9] Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zander et al. (“Zander”) [DE 19856129] in view of Kojima [US 5,000,188] further in view of Amir [US 6,393,136] further in view of Kim et al. (“Kim”) [US 2002/0024633 A1] further in view of Igaki et al. (“Igaki”) [US 2002/0101337 A1].

Regarding claim 20, Zander, Kojima, Amir and Kim meet the claim limitations as set forth in claim 19.

Zander, Kojima, Amir and Kim do not explicitly disclose the following claim limitations:

The apparatus as recited in claim 19, wherein the pressure pick-up is positioned in one of a steering wheel and in a vehicle seat.

However, in the same field of endeavor Igaki discloses the deficient claim limitations, as follows:

The apparatus as recited in claim 19, wherein the pressure pick-up is positioned in one of a steering wheel and in a vehicle seat [*para. 0036*].

It would have been obvious to one with ordinary skill in the art at the time of invention to modify the teachings of Zander, Kojima, Amir and Kim with Igaki to include the pressure sensor in the steering wheel or the seat as it the place where there will always be contact, one is not expected to drive without contact with a steering wheel or a seat.

[10] Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zander et al. (“Zander”) [DE 19856129] in view of Kojima [US 5,000,188] further in view of Amir [US 6,393,136] further in view of Kim et al. (“Kim”) [US 2002/0024633 A1] further in view of White et al. (“White”) [US 5,071,160].

Regarding claim 22, Zander, Kojima, Amir and Kim meet the claim limitations as set forth in claim 17.

Zander, Kojima, Amir and Kim do not explicitly disclose the following claim limitations:

The apparatus as recited in claim 17, wherein the at least one further measured value includes a weight of the at least one person.

However, in the same field of endeavor White discloses the deficient claim limitations, as follows:

The apparatus as recited in claim 17, wherein the at least one further measured value includes a weight of the at least one person [*col. 4, ll. 47-54*].

It would have been obvious to one with ordinary skill in the art at the time of invention to modify the teachings of Zander, Kojima, Amir and Kim with White and utilize a weight sensor, the reasoning being to selectively enable the airbag [col. 4, ll. 52-54]

Conclusion

[11] Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact Information

[12] Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mr. Sath V. Perungavoor whose telephone number is (571) 272-7455. The examiner can normally be reached on Monday to Friday from 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Matthew C. Bella whose telephone number is (571) 272-7778, can be reached on Monday to

Friday from 9:00am to 5:00pm. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dated: May 7, 2008

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